IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

MFA.No. 390 of 1997()

OPMV.160/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD
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APPELLANT - THIRD RESPONDENT:

UNITED INDIA INSURANCE CO. LTD.,
REPRESENTED BY THE MANAGER,
THIRD PARTY CLAIMS OFFICE, JOSE
JUNCTION, ERNAKULAM.

BY ADV. SRI.D.S.WARRIER
SMT.MARY ANITHA JOSE
SRI.SREELAL N.WARRIER

RESPONDENTS - RESPONDENTS - PETITIONER & RESPONDENT:
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1. PAZHAYA PATTILLATH SIDDIQUE, AGED 18 YEARS
S/O. E.M. ALIKUTTY HAJI, ALINAPPURAM, MADAKKARA
P.O. THURUTHI, CHERUVATHUR, KASARGOD DISTRICT.

2. NALUPURAPPATIL ASSAINAR, AGED 32 YEARS,
S/O. KUNHAMU HAJI, CHERAPPURAM, NELESHWAR P.O.,
KASARGOD DISTRICT, KERALA.

3. VALAPPIL MUNEER, AGED 19 YEARS, S/O. KOTTAYIL MOIDU,
RESIDING AT MAVILAKADAPPURAM P.O., MAVILAKADAPPURAM
PADNE VILLAGE, KASARGOD DISTRICT.

4. SYED MOHAMMED P.A. S/O. ABDUL KHADER, ROYA WATCH
WORKS, POST MANIKKOTH, VIA KANHANGAD.

BY ADV. SRI.A.P.CHANDRASEKHARAN
SRI.M.KRISHNAKUMAR
SMT.PRABHA R.MENON

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 390 OF 1997

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Dated this the 4th day of September, 2007

J U D G M E N T

Third respondent-Insurer in O.P. No.160 of 1996 on the file of the Motor Accidents Claims Tribunal, Kasargod is the appellant. Appeal is filed against the direction issued by the Tribunal in the award to the effect that the Insurer shall pay the compensation awarded and then recover the same from the insured.

2. First respondent filed an Original Petition claiming compensation against the appellant and respondents 1, 2 and 4. Appellant admitted the existence of the insurance policy, but contended that the driver was not holding a valid driving licence. Tribunal found that the accident occurred due to the negligence of the driver of the vehicle. Tribunal also found that the petitioner was entitled to get a compensation of Rs.10,500/-. Tribunal further found that there was violation of policy conditions, but the Insurer has to satisfy the award and can recover the same from the insured. In fact the main challenge in the appeal is regarding that direction alone.

3. Findings of the Tribunal that the accident occurred due to the negligence of the driver of the vehicle and petitioner is entitled to get compensation are findings of fact based on good evidence. I do not find any reason to interfere with the same. It is trite law that when there is violation of policy conditions, Insurer has to indemnify the amount and if so advised recover the same from the insured (See **National Insurance Co. Ltd. v. Laxmi Narain Dhut** (2007 (2) KLT 470 (SC). Hence there is no scope for interference with the award passed by the Tribunal and the appeal is only to be dismissed.

3. In the result, the appeal is dismissed.

Civil Miscellaneous Petition No.1547 of 1997 shall stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 390 OF 1997

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J U D G M E N T

4TH SEPTEMEBR, 2007